

Remarks

Claims 42-49 are pending in the subject application. Applicants acknowledge that claims 43 and 45-48 have been withdrawn from further consideration as being drawn to a non-elected invention. By this Amendment, Applicants have canceled claims 44 and 49, amended claim 42 and added new claims 50-56. Support for the amendments and new claims can be found throughout the subject specification and in the claims as originally filed (see, for example, page 25, lines 12-16; Example 4; and Example 7). Entry and consideration of the amendments presented herein is respectfully requested. Accordingly, claims 42, 43, 45-48 and 50-56 are currently before the Examiner and claim 42 reads on the elected species. Favorable consideration of the pending claims is respectfully requested.

As an initial matter, Applicants gratefully acknowledge the Examiner's indication that claim 49 is free of the prior art.

The Examiner notes that the listing of references in paragraphs 0010, 0014, 032, 0061 and 0064 of the specification is not a proper form for an Information Disclosure Statement (IDS). Applicants acknowledge that only those references submitted in their IDS filed February 6, 2008 or cited on form PTO-892 have been considered by the Examiner.

The Examiner has indicated that the title of the invention is not descriptive and that a new title is required that is clearly indicative of the invention to which the claims are directed. In accordance with the Examiner's suggestion, Applicants have amended the title of the invention to "A Method Of Treatment Comprising Administration of a Cytokine Antagonist Molecule." Accordingly, reconsideration and withdrawal of this objection is respectfully requested.

The application is objected to on the grounds that the subject specification fails to comply with the requirements of 37 CFR 1.821-1.825. Specifically, the Examiner indicates that a new sequence listing is required because the sequences in Figures 1A and 1B are not identified by a sequence identifier number. In addition, Figure 1A and 1B are objected to because they disclose sequences without identifying them by a sequence identifier number. Applicants note that an Amendment under 37 CFR §1.825(a) through (c) was filed on April 20, 2009 in response to a Notification of Defective Response. In that Amendment, the brief description of the figures section was amended to provide the sequence identifier number. Applicants respectfully request that the

Amendment be considered and made of record. Accordingly, reconsideration and withdrawal of the objections is respectfully requested.

The specification is objected to because it contained embedded hyperlinks or other forms of browser executable code. Applicants respectfully submit that this issue is moot in view of the amendments made to the specification. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

Claim 42 is objected to because of informalities. The Examiner indicates that the conjunction “an” be inserted between “carrier” and “a”. Applicants gratefully acknowledge the Examiner’s careful review of the claims. In accordance with the Examiner’s suggestions, the claim has been amended. Accordingly, reconsideration and withdrawal of the objection is respectfully requested.

Claims 42, 44 and 49 are provisionally rejected under the judicially created doctrine of “obviousness-type” double patenting over claim 33 of co-pending application 11/913,620. Applicants respectfully assert that the claims as amended herein are not obvious over the claim of the cited application. However, Applicants note that if a “provisional” nonstatutory obviousness-type double patenting rejection is the only rejection remaining in the earlier filed of two pending applications, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer (see M.P.E.P. § 804(I)(B)(1)). Accordingly, reconsideration and withdrawal of the rejection is respectfully requested should the Examiner find the claims in this matter allowable.

Claims 42, 44 and 49 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a method of treating a disease wherein the disease is an acute liver disease or a skin disease wherein the disease is an inflammatory skin disease, does not reasonably provide enablement for a method of treating *any unspecified* auto-immune disease, a viral liver disease, *any unspecified* skin disease or *any unspecified* inflammatory disease. Applicants respectfully assert that the claims as filed are enabled; however, in the interest of advancing prosecution in this matter, the claims have been amended as suggested in the Office Action. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, first paragraph, is respectfully requested.

Claims 42 and 44 are rejected under 35 U.S.C. § 102(b) as anticipated by Baughn *et al.* (U.S. Published Application 2004/0043424). The Office Action indicates that Baughn *et al.* teach a method of treatment comprising administration of a polypeptide of the immunoglobulin superfamily of peptides, IGSFP-4 (SEQ ID NO: 4). SEQ ID NO: 4 comprises a polypeptide which is 100% identical to SEQ ID NO:22 of the instant invention. The Office Action notes that the administered polypeptide may be part of a composition comprising a pharmaceutical carrier. The composition is administered to treat disorders of the immune system. Among diseases to be treated are allergies, contact dermatitis, Crohn's disease, atopic dermatitis, psoriasis and hepatitis, therefore teaching treatment of auto-immune, inflammatory, skin and liver diseases. The Office Action concludes that the teachings of Baughn *et al.* anticipate all the limitations of claims 42 and 43. Applicants respectfully assert that the Baughn *et al.* reference does not anticipate the claimed invention. Particularly, Baughn *et al.* fail to teach a polypeptide consisting of SEQ ID NO: 22. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b) is respectfully requested.

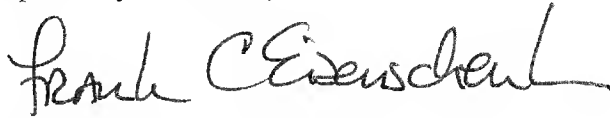
It should be understood that the amendments presented herein have been made solely to expedite prosecution of the subject application to completion and should not be construed as an indication of Applicants' agreement with or acquiescence in the Examiner's position. Applicants expressly reserve the right to pursue the invention(s) disclosed in the subject application, including any subject matter canceled or not pursued during prosecution of the subject application, in a related application.

In view of the foregoing remarks and amendments to the claims, Applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065.

Applicants invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

A handwritten signature in black ink, reading "Frank C. Eisenschenk". The signature is written in a cursive, flowing style with a long horizontal line extending from the end.

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